

*Application No. 10/055307*  
*Page 6*

*Amendment*  
*Attorney Docket No. S63.2B-8618-US01*

### **Remarks**

This Amendment is in response to the Office Action dated **October 8, 2004**, wherein restriction of the claims was made final; claim 1 was objected; and claims 1, 4-5, and 8-11 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. 5667523 to Bynon et al (Bynon).

The following comments are presented in the same order, and with paragraph headings and numbers that correspond to the Office Action.

### **Election/Restrictions**

1. In the Restriction Requirement dated June 10, 2004, the Application was said to contain five distinct species of the claimed invention as follows: species I, corresponding to figures 1-4; species II, corresponding to figures 5-6; species III, corresponding to figures 7-8; species IV, corresponding to figures 9-11; and species V, corresponding to figures 12-13.

In responding to this Restriction Requirement, Applicants elected species 1, and asserted that claims 1, 4, 5, 8-28, 32-33 and 35 were believed to read on the elected species.

Despite Applicants election and identification of claims, in the current Office Action some of the claims (12-28, 32-33, and 35) identified by Applicants as reading on the elected species are said be withdrawn from consideration. The Office Action also notes that the withdrawal of the claims is made final as Applicants did not point out errors in the restriction requirement.

In response, Applicants object to the 'finality' of the restriction requirement. In the original Restriction Requirement of June 10, 2004, five supposed species were identified. Applicants did not "distinctly and specifically point out the supposed errors in the restriction requirement" as Applicants did not believe this identification of species was necessarily in error. In the most recent Office Action however, claims previously identified by the Applicants as being believed to read on the elected species have been summarily withdrawn, and some of the claims identified by Applicants are only now being asserted by the Examiner as reading on non-elected species. Since the Office Action is the first instance where any assertion as to which species the instant claims read, Applicants believe the finality of the restriction is in error.

*Application No. 10/055307*  
*Page 7*

*Amendment*  
*Attorney Docket No. S63.2B-8618-US01*

Applicants respectfully request that the withdrawal of at least some of the claims be reconsidered. More specifically, Applicants request that the withdrawal of at least instant claim 28, an independent claim, be reconsidered. Claim 28 does describes features shown in FIGs. 9-11 of non-elected species IV. The instant claim however, also clearly describe an expandable stent such as is shown in FIGs. 1-2 of the elected species. Because the claim reads on the elected species it is appropriate for the claim to be examined in the present prosecution.

### **Claim Objections**

2. In the Office Action claim 1 was objected because the phrase "from a" in line 4 should be replaced with --from the--. Applicants have corrected the wording as requested.

### **Claim Rejections – 35 USC §102**

3. In the Office Action claims 1, 4-5 and 8-11 were rejected under §102(b) as being anticipated by Bynon. More specifically, it is asserted in the Office Action that the stent for securing and anchoring a graft to the wall of a blood vessel shown in FIGs. 2-3 and 6-7 of Bynon has all of the limitations recited in instant claim 1 of the present Application.

Bynon does not describe, show or otherwise teach a stent having all the recited features of instant claim 1 as presented above.

Bynon describes a multi-layer graft 10 made up of elements 16, 18 and 20, such as is shown in FIGs. 4 and 6. Elements 18 and 20 are identified as being preferably "a stent like that described in U.S. Pat. No. 4,733,665 issued to Palmaz" whereas element 16 is a flexible tubular member such as a biocompatible material of PTFE (column 7, lines 5-11 and 18-20). Nowhere does Bynon teach or suggest that the layers 18 and 20 of the graft 10 alter their relative position or configuration in the reduced state and the expanded state.

The Office Action points to elements 26 and 28 as being the recited "first peaks" and "second peaks" respectively. This characterization is erroneous as Bynon describes elements 26 and 28 as being the ends of element 20 (column 7, lines 11-17). If such elements are considered as the plurality of first peaks and second peaks, then elements 26 and 28 do not meet the recitation of instant claim 1 as they are equidistant from the longitudinal axis of the stent in both the reduced and expanded state; particularly, given than element 20 is a single layer feature

Application No. 10/055307  
Page 8

Amendment  
Attorney Docket No. S63.2B-8618-US01

of the graft 10 (see FIGs. 6 and 7) in contrast to the instant claims.

Assuming *arguendo* that stent structures 18 and 20 of Bynon have a serpentine configuration, then any "first peaks" and "second peaks" of the overlapping 'stents' will be a different distance from the longitudinal axis of the graft 10 in the reduced state. The multi-layered nature of the Bynon graft however, will also necessitate that in the *expanded* state the layers 18 and 20 remain overlapping. As a result, the presumed first peaks and second peaks of the overlapping layers will remain a different distance from the longitudinal axis in both the reduced state and expanded state. Such a continuously overlapping arrangement of stent layers is not what is described in the instant claims. As a result, the rejection is respectfully overcome.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date:

12/28/04

By:

James M. Urzedowski  
Registration No.: 48596

6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001